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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of

Petition for Rulemaking of the
Telecommunications Resellers Association to
Eliminate Comity-Based Enforcement of Other
Nations' Prohibitions Against Uncompleted
Call Signaling Configuration of International
Call-Back Service

File No. RM-9249

REPLY COMMENTS OF USA GLOBAL LINK, INC.

As comments on the above-referenced petition of the Telecommunications Resellers Association ("TRA") make clear, proponents of comity-based enforcement of foreign prohibitions on call-back services using uncompleted call signaling seek to enlist the Commission in their efforts to forestall competition in their home markets. Such efforts are wholly inconsistent with the Commission's own policies and with the World Trade Organization Agreement on Basic Telecommunications ("WTO Basic Telecom Agreement").

Those commenters opposing elimination of comity-based enforcement of other nations' call-back prohibitions have sought to portray the elimination of comity-based enforcement as an affront to other nations' sovereignty.¹ This is nothing more than a straw man and misrepresents

¹ See Comments of the Philippine Long Distance Telephone Company ("PLDT"), at 1-2 (May 1, 1998); Comments of Telkom SA Ltd., at 9 (May 1, 1998); Opposition of the Public Service Regulatory Commission of the Republic of Panama, at 8 (May 1, 1998). It is ironic that those commenters complaining about extraterritorial enforcement of Commission policies refer repeatedly to "illegal call-back services," suggesting that the Commission itself should change *U.S. policies* to reflect foreign laws prohibiting call-back services.

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the Commission's policy. The Commission has never sought to force other nations to accept call-back services using uncompleted call signaling in their territories, and TRA has not suggested that it do so now.

What TRA has advocated, with the support of USA Global Link, is that the Commission reconcile its call-back policies with the new WTO Basic Telecom Agreement, which superseded the old, reciprocity-based regulatory regime. By promulgating international pro-competitive rules reflecting the Commission's own objectives, the WTO Basic Telecom Agreement eliminates the need for the Commission to trade enforcement of foreign comity prohibitions for enforcement abroad of the Commission's objectives. This substantial change in the international regulatory framework for international telecommunications provides the Commission with ample grounds for re-examining and reconciling its rules.² For these reasons, the Commission should eliminate a rule whereby foreign carriers enlist the Commission's support and resources to enforce other nations' call-back prohibitions.

The Commission's policy to date has stated that foreign governments should make their own determinations about the legality of call-back and then take responsibility for enforcing their own laws.³ This position was forcefully restated by one of the commenters: "If call-back providers want to debate whether call-back services are or should be illegal in a given country,

² *Contra* Comments of Cable & Wireless plc, at 4 (May 1, 1998); Panama PSRC Opposition, at 4-5; PLDT Comments, at 2. The fact that the Commission previously espoused the same policy objectives now embodied in the WTO agreement further proves TRA's point—that the United States may now pursue its pro-competitive policies at the international level because they have now been embedded in the new international rules. Thus, TRA's petition does not seek reconsideration of the original call-back decisions, but rather an altogether new policy based on a radically new set of circumstances.

³ *VIA USA, Ltd., Order on Reconsideration*, 10 FCC Rcd. 9540, 9558 (1995) ("Call-back Reconsideration Order").

that country's legal and political forums are the proper focus.”⁴ Unfortunately, the Commission's policies have not always functioned in this manner. Most recently, the Philippine Long Distance Telephone Company (“PLDT”) bypassed its own national regulator and filed with the Commission complaints seeking damages from U.S. international carriers.⁵ At the very least, PLDT's actions indicate that the Commission's *current* policy is not functioning as intended.⁶ TRA's proposal to extricate the Commission from the enforcement of anticompetitive foreign laws would ensure that foreign regulators are given the opportunity to enforce their own laws in the first instance.⁷

While the WTO Basic Telecom Agreement is revolutionary, it is not yet universal. Some markets remain closed to competition, either because their governments are not WTO members or their schedule of commitments under the WTO Basic Telecom Agreement postpones full competition until some distant point in the future. Contrary to the claims of some commenters,⁸ call-back is a critical means for exerting competitive pressures in these markets. The Commission has long recognized the ability of call-back services to foster competition and drive

⁴ Telkom SA Comments, at 9 (thus undercutting Telkom SA's characterization of TRA's proposal as an affront to South Africa's sovereignty).

⁵ *Philippine Long Distance Telephone Co. v. USA Global Link L.P. d/b/a/ USA Global Link*, File No. E-95-33; *Philippine Long Distance Telephone Co. v. International Telecom, Ltd. d/b/a/ Kallback Direct*, File No. E-95-29.

⁶ *Contra Cable & Wireless Comments*, at 7.

⁷ By returning enforcement to foreign regulators, the Commission will not only ensure that it is not forced to interpret foreign laws that are beyond its competence, but also would also conserve Commission resources for serving the public interest in the United States.

⁸ *See, e.g., Telkom SA Comments*, at 6.

down international phone rates.⁹ That rationale will hold true so long as there are competitive barriers in international telecommunications.

A number of commenters have argued for an approach of gradualism.¹⁰ This was to be expected, given that monopolists will seek to preserve monopoly rents as long as possible. The WTO Basic Telecom Agreement did not adopt a date certain for full liberalization of all markets for basic telecommunication services. Instead, it allowed individual nations to adopt schedules of commitments, including specific commitments and timetables for liberalization. Nevertheless, the procedures for implementation of these commitments were never intended as a basis for forestalling competition. Given its enthusiastic backing of the WTO Basic Telecom Agreement, the Commission should not aid and abet the preservation of monopoly rents on the grounds that the WTO agreement has not mandated instantaneous liberalization.

⁹ *Call-back Reconsideration Order*, 10 FCC Rcd. at 9540.

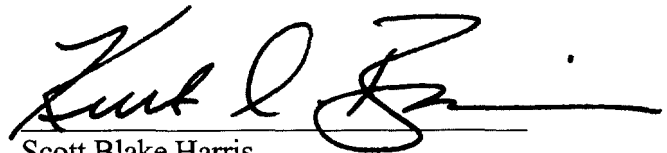
¹⁰ *See* Panama PSRC Opposition, at 6; Telkom SA Comments, at 7.

CONCLUSION

For the reasons stated above and in USA Global Link's initial comments, the Commission should grant TRA's petition to eliminate comity-based enforcement of other nations' prohibitions against international call-back services that use uncompleted call signaling.

Respectfully submitted,

USA GLOBAL LINK, INC.

A handwritten signature in black ink, appearing to read "Scott Blake Harris", written over a horizontal line.

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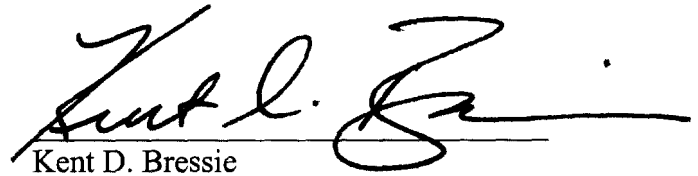
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